



April 17, 2002

Ms. Catherine C. Kemp
Records Supervisor
Rowlett Police Department
P.O. Box 370
Rowlett, Texas 75030-0370

OR2002-1932

Dear Mr. Kemp:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 161426.

The Rowlett Police Department (the "department") received a request for suicide reports made by investigating officers in 2001, and statistics on the number of attempted and successful suicides in the area. You claim that the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.101 encompasses confidentiality statutes such as section 58.007 of the Family Code. Section 58.007 makes certain juvenile law enforcement records confidential. Family Code section 51.04(a) states that the Juvenile Justice Code, Title 3 of the Family Code, "covers the proceedings in all cases involving the delinquent conduct or conduct indicating the need for supervision engaged in by a person who was a child within the meaning of [Title 3] at the time he engaged in the conduct." Thus, section 58.007 deems confidential law enforcement records from all cases involving a child engaging in delinquent conduct or conduct indicating the need for supervision. After reviewing incident report numbers 01035203 and 01037565, we conclude that they constitute the types of records that section 58.007 covers. Thus, incident report numbers 01035203 and 01037565 must be withheld in their entirety under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code.

Section 552.101 also incorporates the doctrine of common-law privacy. For information to be protected from public disclosure under common-law privacy, the information must meet the criteria set out in *Industrial Foundation v. Texas Industrial Accident Board*, 540 S.W.2d

668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Information may be withheld from the public when (1) it is highly intimate and embarrassing such that its release would be highly objectionable to a person of ordinary sensibilities, and (2) there is no legitimate public interest in its disclosure. *Id.* at 685; Open Records Decision No. 611 at 1 (1992). The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. Accordingly, the department must withhold any information that identifies individuals that made unsuccessful suicide attempts in the submitted attempted suicide reports. We have marked this information accordingly. We note that although you have classified incident report number 01011559 as a successful suicide, the submitted information does not indicate that the attempt was successful. Thus, we have also marked the information in incident report number 01011559 that must be withheld under section 552.101 in conjunction with common-law privacy if the attempted suicide in that case was not successful.

We note that the privacy rights of an individual lapse upon death. *Moore v. Charles B. Pierce Film Enters., Inc.*, 589 S.W.2d 489, 491 (Tex. App.—Texarkana 1979, writ ref'd n.r.e.); *see also Justice v. Belo Broadcasting Corp.*, 472 F. Supp. 145, 146-47 (N.D. Tex. 1979) (“action for invasion of privacy can be maintained only by a living individual whose privacy is invaded”) (quoting Restatement of Torts 2d). Thus, we conclude that the department may not withhold any of the submitted information regarding successful suicide attempts from disclosure pursuant to section 552.101 of the Government Code in conjunction with the common-law right to privacy. *See generally* Attorney General Opinion H-917 at 3-4 (1976); *see also* Open Records Decision No. 272 at 1 (1981). We note that although you have classified incident report number 01027495 as an attempted suicide, it appears that the suicide attempt at issue was successful. Thus, the department may not withhold any of the information in incident report number 01027495 under section 552.101 in conjunction with common-law privacy.

We note that the submitted incident reports contain information that must be withheld under section 552.130 of the Government Code. Section 552.130 excepts from disclosure Texas driver's license information and license plate numbers. We note, however, that section 552.130 is designed to protect the privacy interest of the individual. Thus, as privacy rights lapse upon an individual's death, the department may not withhold the driver's license information or license plate numbers for those individuals that are deceased. We have marked the information in the submitted documents that must be withheld under section 552.130.

Finally, we note that the remaining unmarked social security numbers of living individuals in the submitted documents may be confidential under federal law. A social security number may be withheld in some circumstances under section 552.101 in conjunction with the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I). *See* Open Records Decision No. 622 (1994). These amendments make confidential social security

numbers and related records that are obtained and maintained by a state agency or political subdivision of the state pursuant to any provision of law enacted on or after October 1, 1990. *See id.* We have no basis for concluding that any of the social security numbers in the responsive records are confidential under section 405(c)(2)(C)(viii)(I), and therefore excepted from public disclosure under section 552.101 of the Act on the basis of that federal provision. We caution, however, that section 552.352 of the Act imposes criminal penalties for the release of confidential information. Prior to releasing any social security number information, you should ensure that no such information was obtained or is maintained by the department pursuant to any provision of law enacted on or after October 1, 1990.

To summarize: (1) incident report numbers 01035203 and 01037565 must be withheld in their entirety under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code; (2) we have marked the information in the submitted documents that must be withheld under section 552.101 and common-law privacy; (3) we have marked the information in the submitted documents that must be withheld under section 552.130 of the Government Code; (4) the remaining unmarked social security numbers may be confidential under federal law; and (5) the remaining information must be released.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

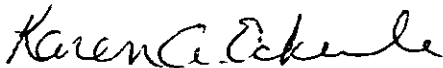
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Karen A. Eckerle
Assistant Attorney General
Open Records Division

KAE/sdk

Ref: ID# 161426

Enc: Submitted documents

c: Mr. Mike Halligan
Texas Mental Health Consumers
7701 North Lamar, Suite 500
Austin, Texas 78752
(w/o enclosures)